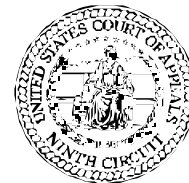




Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939



Cathy A. Catterson
Clerk of Court

(415) 556-9800

*This summary constitutes no part of the opinion of the court.
It has been prepared by court staff for the convenience of the reader.*

A&M Records v. Napster, Inc., 00-16401/403

Panel: Chief Judge Schroeder, Judges Beezer (author) and Paez

Decision Date: February 12, 2001

The panel affirmed in part and reversed in part a published decision by Chief District Judge Patel, 114 F. Supp. 2d 896, 900 (N.D. Cal. 2000), which entered a preliminary injunction against Napster in copyright infringement actions brought by various record companies holding copyrights in sound recordings. Napster is the designer and operator of a system that permits PC users to transmit and retain copyrighted sound recordings employing digital technology. Through a process known as “peer-to-peer” file sharing, Napster allows its users to make music files stored on individual computer hard drives available for copying by other Napster users, to search for music files stored on other users’ computers, and to transfer exact copies of other users’ music files from one computer to another via the Internet.

The panel agreed with the district court that the record companies presented a prima facie case of direct copyright infringement by Napster users. The panel also agreed with the district court’s rejection of Napster’s affirmative defense that its users are engaged in fair use of the copyrighted material.

The panel upheld the district court’s conclusion that Napster may be secondarily liable for the direct copyright infringement under two doctrines: contributory copyright infringement and vicarious copyright infringement. As to the contributory copyright infringement claim, the panel concluded that Napster knowingly encourages and assists its users to infringe the record companies’ copyrights and Napster materially contributes to the infringing activity. As to the vicarious copyright infringement claim, the panel concluded that Napster has a

direct financial interest in its users' infringing activity and retains the ability to police its system for infringing activity. The panel recognized that whether Napster may obtain shelter under the safe harbor provisions of the Digital Millennium Copyright Act is an issue to be more fully developed at trial. The panel agreed with the district court that the Audio Home Recording Act did not cover the downloading of these music files to computer hard drives.

The panel concluded, however, that the scope of the district court's preliminary injunction was overbroad and remanded for the district court to modify the injunction as follows: Napster may be held liable for contributory copyright infringement only to the extent that Napster knows of specific infringing files with copyrighted musical compositions or sound recordings, knows or should have known that the files are available on the Napster system, and fails to act to prevent the distribution of the copyrighted material. Napster may be held liable for vicarious copyright infringement when it fails to affirmatively use its ability to patrol its system and preclude access to potentially infringing files listed in its search index.

The panel directs the district court to immediately enter a modified preliminary injunction.

Lead Counsel for Appellant Napster:

Laurence Pulgram, Esq.	(415) 875-2300
David Boies, Esq.	(914) 273-9800

Lead Counsel for Appellees A&M Records, Inc., et al.:

Keith Evans-Orville, Esq.	(415) 772-5795
Jeff Knowles, Esq.	(415) 772-5795
Russell Frackman, Esq.	(310) 312-2000